

- 21
Amended
- (a) a bag substantially oblong in shape;
 - (b) said bag being of ample size to enclose a bunch;
 - (c) said bag composed of a flexible open-mesh fabric which allows free circulation of air throughout the fruit cluster, yet excludes insects and birds, provides a windbreak, and partially shades said bunch;
 - (d) said fabric made of water-repellant, UV resistant fiber; and
 - (e) means for anchoring the top of said bag to the fruitstalk of said bunch.
-

Claim 2, change "Claim 1" to —Claim 7—.

Claim 3, change "Claim 1" to —Claim 7—.

Claims 1, 5 and 6, cancel.

REMARKS

General

By the above amendment, applicant has amended the claims to define the invention more particularly and distinctly so as to overcome the rejections and define the invention patentably over the prior art.

The Rejection of Claim 1 under 35 U.S.C. 102(b) Is Overcome

The last Office Action rejected independent Claim 1 under 35 U.S.C. 102(b) since it was said to be unpatentable over Alexander; therefore, Claim 1 has been rewritten as new Claim 7 to define patentability over this reference. Applicant requests reconsideration of this rejection, as now applicable to Claim 7, for the following reasons:

(1) Claim 7 recites:

"(a) a bag substantially *oblong* in shape;"

and,

(2) Claim 7 recites:

“(c) said bag composed of a flexible *open-mesh* fabric which allows free circulation of air throughout the fruit cluster, yet excludes insects and birds, provides a windbreak, and partially shades said bunch;”

Note: The limitations added to Claim 1, now rewritten as Claim 7, are italicized here for emphasis.

This language distinguishes over Alexander under § 102 because Alexander limits his invention to a bag substantially globular in shape, and because he neither states nor implies in the specification that said bag is made of an open-mesh material.

The material Alexander shows in Figs. 1 and 2 is a flexible, woven, dense fabric of considerable thickness, such as burlap. The warp and fill threads are represented by a graphic symbol also used for flexible, woven, open-mesh fabric; however, regardless of the graphic symbol, the material is clearly defined in the specification as thermally insulating, which means it cannot be open-mesh because then there would be no insulation – during a freeze, heat would rapidly radiate from the fruit through the pores of the fabric to the atmosphere and be lost, thereby providing no protection.

A material need not be open-mesh to be air and water permeable. Alexander is concerned about rain or irrigation water from sprinklers being trapped inside the cover. Therefore, he specifies materials that allow water to seep out and evaporate, but are dense enough to provide insulation. Free circulation of air in contact with the fruit is not a criterion for protecting it against cold – only enough air for the fruit to remain dry is required.

Alexander does not teach the use of an oblong shaped bag or open-mesh fabric for protecting maturing fruits and vegetables from low temperature.

Accordingly, applicant submits that Claim 7 is patentable over Alexander and should be allowed.

The Rejection of Claims 2 and 3 under 35 U.S.C. 103(a) Is Overcome

Claims 2 and 3 were rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander.

Applicant requests reconsideration of this rejection for the following reason:

A person skilled in the art of protecting maturing fruits and vegetables from low temperature would never have provided Alexander with a fabric that has a weight of 86-113 grams per square meter and a cloth count of approximately 13 warps by 10 fills per square centimeter, since such a fabric has no insulation quality. Applicant's invention solves a different problem than the reference, and such different problem is recited in the claims. In re Wright, 6 USPQ 2d 1959 (1988).

Alexander claims a cover for thermally protecting fruits from a soft freeze, which damages many fruits while they are maturing, citrus in particular. Dates are never protected against freezes, because they are susceptible to the effects of low temperature only during the green "kimri" stage, when there are no freezes where dates are grown.

Applicant claims a cover for protecting Deglet Noor dates from birds, rain, insects, wind, and sunburn, that at the same time allows maximum aeration. If transpiration of moisture from the dates during ripening is inhibited, fruit quality is lowered and eventually the dates will rot. Claims 2 and 3 are directed to a material that, above all, is porous enough to provide free circulation of air but still excludes beetles and moths. The surface of the date "sees" the atmosphere, thereby allowing not only rapid transpiration of moisture, but also radiation of heat. A thermally insulating material is designed to block this form of heat loss.

Accordingly, applicant submits that dependent Claims 2 and 3 are patentable over Alexander and should also be allowed.

Conclusion

For all the above reasons, applicant submits that the claims as amended define over the prior art under § 102, and the claimed distinctions are of patentable merit under § 103 because of the new results. Therefore, applicant submits that this application is now in full condition for allowance, which action applicant respectfully solicits.

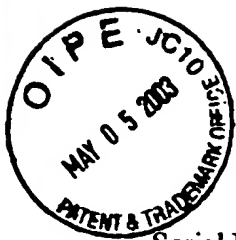
Conditional Request for Constructive Assistance

Applicant has amended the specification and claims of this application so that they are proper, definite, and define novel structure which is also unobvious. If, for any reason, this application is not believed to be in full condition for allowance, applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. § 2173.02 and § 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without need for further proceedings.

Very respectfully,

A handwritten signature in cursive script, reading "S. P. Denis". The signature is written in black ink and is positioned below the closing "Very respectfully,".

Stephen Paul Denis, Applicant Pro Se



In the United States Patent and Trademark Office

Serial Number: 09/928,325
Appn. Filed: 08/13/2001
Applicant: Stephen Paul Denis
Appn. Title: Means and a Method for Protecting Deglet Noor Dates
Examiner/GAU: Jane J. Rhee/1772

Mailed: May 5, 2003
At: Indio, California

Clean Version of the Replacement Paragraph and Amended Claims

Assistant Commissioner for Patents
Washington, District of Columbia 20231

Dear Sir or Madam:

I hereby submit a clean version of the replacement paragraph and amended claims:

Specification:

Page 3, paragraph 13:

13 Conversely, U.S. Pat. No. 5,535,543, "Means and a Method for Thermally Protecting Fruits and Vegetables While Maturing", is directed to a bag that allows water to only seep through. Nowhere in the patent is the material described as mesh. The main function of the invention is the opposite of what is required of a date-bunch cover. Thermally insulating fruit involves protecting it from contact with cold air that injures cells. A bunch of 900 full-grown dates at temperatures between 70° and 122° F must lose several cups of water everyday in the form of water vapor from the stomata of the fruit during ripening. Thermally insulating a date bunch, when free circulation of air is vital, would certainly ruin the fruit.

Claims:

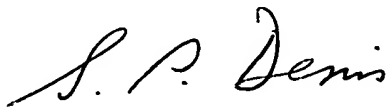
Claims 2 and 3:

2. The cover of claim 7 wherein said fabric is white, woven, open-mesh polyester having a weight of about 86 to 113 grams per square meter (2.5 to 3.3 ounces per square yard).

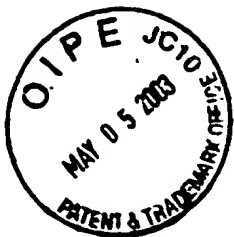
3. The cover of claim 7 wherein said fabric has a cloth count of approximately 13 warps by 10 fills per square centimeter (32 warps by 26 fills per square inch).

* * * * *

Very respectfully,



Stephen Paul Denis, Applicant Pro Se



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Version with Markings to Show Changes Made

Assistant Commissioner for Patents
Washington, District of Columbia 20231

Dear Sir or Madam:

I hereby supply a marked-up version of the replacement paragraph and amended claims.

Specification:

Page 3, paragraph 13:

13 Conversely, U.S. Pat. No. 5,535,543, "Means and a Method for Thermally Protecting Fruits and Vegetables While Maturing", is directed to a bag that allows water to only seep through. Nowhere in the patent is the material described as mesh. [The globular shape and elasticized opening are of no value for protecting dates.] [The main function of the invention is the opposite of what is required of a date-bunch cover: Insulation is measured by "R" factor, a unit of resistance of motionless air; thermally insulating fruit involves protecting it from contact with outside cold air and wind which cause its internal heat and moisture to dissipate.] The main function of the invention is the opposite of what is required of a date-bunch cover. Thermally insulating fruit involves protecting it from contact with cold air that injures its cells. A bunch of 900 full-grown dates at

temperatures between 70° and 122° F must lose several cups of water everyday in the form of water vapor from the stomata of the fruit during ripening. Thermally insulating a date bunch, when free circulation of air is vital, would certainly ruin the fruit.

Claims:

I claim:

[1. (amended) A cover for protecting Deglet Noor dates from birds, rain, insects, wind, and sunburn while on the palm, which comprises:

- (a) said cover being in the shape of a bag;
- (b) said cover being of ample size to enclose a bunch;
- (c) said bag composed of a flexible fabric which allows free circulation of air throughout the fruit cluster, yet excludes insects and birds, provides a windbreak, and partially shades said bunch;
- (d) said fabric made of water-repellant, UV resistant fiber; and
- (e) means for anchoring the top of said bag to the fruitstalk of said bunch.]

2. (amended) The cover of [claim 1] claim 7 wherein said fabric is white, woven, open-mesh polyester having a weight of about 86 to 113 grams per square meter (2.5 to 3.3 ounces per square yard).

3. (amended) The cover of [claim 1] claim 7 wherein said fabric has a cloth count of approximately 13 warps by 10 fills per square centimeter (32 warps by 26 fills per square inch).

[5. A method for protecting Deglet Noor dates from birds, rain, insects, wind, and sunburn, while on the palm, which comprises the steps of:

- (a) providing a cover for said dates, said cover being in the shape of a bag, said bag being of ample size to enclose a bunch and composed of a flexible fabric which allows free circulation of air throughout the fruit cluster, yet excludes insects and birds, provides a windbreak, and partially shades the bunch, said fabric being made of water-repellant, UV resistant fiber;
- (b) slipping said bag over the bunch;
- (c) wrapping the upper portion of said bag in a spiraling fashion to form concentric

overlapping layers around the upper portion of said bunch, whereby a hood is formed, such that the upper portion of said bunch is shaded, and said fruit cluster is protected from rain; and

- (d) providing means for anchoring the top of said bag in a tightly closed condition around the bottom of the fruitstalk, so as to completely enclose said bunch.]

[6. (amended) A method for protecting for Deglet Noor dates from birds, rain, insects, wind, and sunburn, while on the palm, which comprises the steps of:

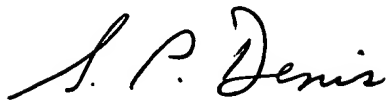
- (a) providing a cover for said dates, said cover being in the shape of a bag, said bag being of ample size to enclose a bunch and composed of a flexible fabric which allows free circulation of air throughout the fruit cluster, yet excludes insects and birds, provides a wind break, and partially shades said bunch, said fabric being made of water-repellant, UV resistant fiber;
- (b) slipping said bag over the bunch;
- (d) puckering the middle portion of said bag around the bottom of the fruitstalk;
- (e) providing means for anchoring approximately the middle of said bag in a tightly closed condition around the bottom of said fruitstalk, so as to completely enclose said bunch; and
- (f) folding down and over the top of said bunch the portion of said bag protruding above where said bag is anchored to said fruitstalk, so as to form an umbrella-like structure, such that the upper portion of said bunch is shaded, and said fruit cluster is protected from rain.]

7. A cover for protecting Deglet Noor dates from birds, rain, insects, wind, and sunburn while on the palm, which comprises:

- (a) a bag substantially oblong in shape;
- (b) said bag being of ample size to enclose a bunch;
- (c) said bag composed of a flexible open-mesh fabric which allows free circulation of air throughout the fruit cluster, yet excludes insects and birds, provides a windbreak, and partially shades said bunch;
- (d) said fabric made of water-repellant, UV resistant fiber; and
- (e) means for anchoring the top of said bag to the fruitstalk of said bunch.

* * * * *

Very respectfully,

A handwritten signature in cursive script that reads "S. P. Denis". The signature is written in black ink and is positioned below the closing "Very respectfully,".

Stephen Paul Denis, Applicant Pro Se



In the United States Patent and Trademark Office

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Appn. Title: Means and a Method for Protecting Deglet Noor Dates
Examiner/GAU: Jane J. Rhee/1772

Mailed: May 5, 2003
At: Indio, California

Amendment E

Assistant Commissioner for Patents
Washington, District of Columbia 20231

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Dear Sir or Madam:

I hereby submit a clean set of all pending claims, which consolidates all previous versions:

CLAIMS

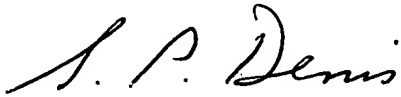
I claim as my invention:

2. The cover of claim 7 wherein said fabric is white, woven, open-mesh polyester having a weight of about 86 to 113 grams per square meter (2.5 to 3.3 ounces per square yard).
3. The cover of claim 7 wherein said fabric has a cloth count of approximately 13 warps by 10 fills per square centimeter (32 warps by 26 fills per square inch).
7. A cover for protecting Deglet Noor dates from birds, rain, insects, wind, and sunburn while on the palm, which comprises:
 - (a) a bag substantially oblong in shape;
 - (b) said bag being of ample size to enclose a bunch;
 - (c) said bag composed of a flexible open-mesh fabric which allows free circulation of air throughout the fruit cluster, yet excludes insects and birds, provides a windbreak, and partially shades said bunch;

- (d) said fabric made of water-repellant, UV resistant fiber; and
- (e) means for anchoring the top of said bag to the fruitstalk of said bunch.

* * * * *

Very respectfully,

A handwritten signature in cursive script that reads "S. P. Denis".

Stephen Paul Denis, Applicant Pro Se